

REMARKS

Applicant appreciates the Examiner's review of the application. Reconsideration and allowance of all claims are requested.

Claims 1 - 8 and 12 - 24 are currently pending, of which claims 1, 18, 19 and 20 are independent. Claims 9, 10 and 11 have been canceled without prejudice. Claims 1 - 8 and 12 - 24 are currently amended. Support for the amendments to system claims may be found at, for example, p. 31, ll. 11 - 19 ("The machine-readable medium may store programmable parameters and may also store information including executable instructions ... The machine-readable medium may comprise read-only memory (ROM), random-access memory (RAM), nonvolatile memory ... The machine may comprise one or more processors, microcontrollers, and/or other arrays of logic elements."). The related dependent claims have been amended to correspond to the amended independent claims. Applicant respectfully submits that no new matter has been added by the amendments.

Applicant's previous arguments are hereby incorporated by reference in their entireties in addition to the Remarks discussed herein.

Double Patenting

Applicant notes that this rejection is currently a provisional double patenting rejection as neither this application nor U.S. Application No. 10/382,947 have claims indicated as allowable by the Examiner. At the time that either claims of this application or U.S. Application No. 10/382,947 are allowed, Applicant will revisit the necessity of filing a terminal disclaimer. Applicant respectfully requests that this rejection be held in abeyance at this time.

Claims 1 - 5, 7 - 8, 12 - 20 and 22 - 24 are patentable under 35 U.S.C. § 102(c) over Herman (U.S. Publication No. 2002/0035489).

Claims 1 - 5, 7 - 8, 12 - 20 and 22 - 24 are patentable over Herman. Reconsideration and withdrawal of the rejection are respectfully requested.

Independent claim 1 has been amended to recite: "wherein the structured financial asset generates a variable net cash flow, after payment of premiums, based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate."

Support for the amendments may be found at, for example, Specification p. 23, ll. 17 - 18 ("Cash distributions may be based upon and timed by mortality payments."). As such, the payments are based upon actual paid death benefits in a given year. Similarly, "the periodic death benefits and additional pro rata earnings may form the basis for annular cash flow". See Specification p. 5, ll. 21 - 23 and p. 19, under "Premium Payments". Furthermore, net cash flow is dependent on, among other aspects, "the policy(ies) remaining in force". See Specification p. 18, under "Net Cash Flow". As such, the actual number and timing of mortalities determines the net cash flow. If fewer or more insureds die during a year, then the net cash flow varies either up or down.

Herman does not disclose "wherein the structured financial asset generates a variable net cash flow, after payment of premiums, based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate."

Herman discloses a system that uses an expected mortality rate to guarantee a predetermined cash flow through the use of a reinsurance policy. Under Herman, the cash flow is always at least as much as predicted by the expected mortality rate in a given policy period.

In contrast, the claimed invention has a *variable* net cash flow where payments are made based upon the number of actual mortalities during a given policy period. The variable net cash flow in the claimed invention is not based upon and timed by an expected mortality rate, as found in Herman.

There is a distinct difference between these payment schedules. As an example, assume that during a given policy period, five insured individuals are expected to die based upon expected mortality rates. Also, assume that during that given policy period only three insured individuals die.

1. Under Herman: The policy holder will be paid for *all five expected deaths*. Three will be paid using policy death benefits. The remaining two will be paid for using funds from the reinsurance policy. Thus, Herman always guarantees a minimum payment based upon the expected mortality rate, which is referred to as a "mortality guarantee".

2. Under the Claimed Invention: The policy holder will be paid for *only the three actual death benefits*. Thus, the claimed invention has a variable net cash flow "based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate". The claimed invention does not "guarantee" a minimum payment each policy period, and, in fact, embraces the variation from expected mortality rates, which results in higher returns in later years.

As is shown by this example, Herman does not disclose a variable net cash flow "based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate". Instead, Herman discloses that a "*predetermined* cash flow is guaranteed" based upon and times by expected mortality rates. Herman at paragraph 0009 (emphasis added).

The benefit to Applicant's invention is that it permits variable net cash flow, which in turn is used to cover increases in life expectancy and the corresponding length and timing of policy payments. Herman does the opposite and guarantees a minimum payment each year for a set duration.

Applicant's invention, as claimed, requires: "wherein the structured financial asset generates a variable net cash flow, after payment of premiums, based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate." Herman discloses a system that is *not* based upon and timed by actual mortality rate and *is* based upon and timed by an expected mortality rate. Therefore, Herman does not teach every element of the independent claims and the rejection should be withdrawn.

Independent claims 18, 19 and 20 are patentable over Herman for reasons similar to those discussed above for independent claim 1. Dependent claims 2 - 5, 7 - 8 and 12 - 17 depend from independent claim 1 and add further patentable features to the patentable features of independent claim 1. Dependent claims 22 - 24 depend from independent claim 20 and add further patentable features to the patentable features of independent claim 20.

Therefore, claims 1 - 5, 7 - 8, 12 - 20 and 22 - 24 are patentable over Herman for at least these reasons. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 6 and 21 are patentable under 35 U.S.C. § 103(a) over Herman.

Independent claims 1 and 20 are patentable over Herman as described above. Dependent claims 6 and 21 depend from independent claims 1 and 20, respectively, and add further patentable features to the patentable features of the independent claims. As such, claims 6 and 21 are patentable over Herman. Reconsideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

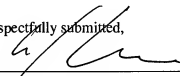
Applicant believes the application is now in condition for allowance. Reconsideration and withdrawal of the rejections are requested.

Applicant strongly encourages the Examiner to call Applicant's representative at the below number to discuss any outstanding issues in the application.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-2228, under Order No. 027110.0104C1US from which the undersigned is authorized to draw.

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Respectfully submitted,

By 
Matthew J. Laskoski
Registration No.: 55,360
PATTON BOGGS LLP
8484 Westpark Drive, 9th Floor
McLean, Virginia 22102
(703) 744-8055
(703) 744-8001 (Fax)
Attorney for Applicant